

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Jeffrey Molnar, et al.,

Plaintiff,

v.

NCO Financial Systems, Inc.,

Defendant.

Civil No. 13cv131-BAS (JLB)

Amended Scheduling Order

[ECF Nos. 61, 81, 103]

Good cause appearing, **IT IS HEREBY ORDERED:**

1. Counsel shall refer to the Standing Order for Civil Cases for the Honorable Cynthia Bashant, which is accessible via the Court's website at www.casd.uscourts.gov.

2. Plaintiff(s) (or the party(ies) having the burden of proof on any claim) shall serve on all parties a list of experts whom that party expects to call at trial regarding merits on or before **February 19, 2015**. Defendant(s) (or the party(ies) defending any claim, counterclaim, crossclaim, or third party claim) shall serve on all parties a list of experts whom that party expects to call at trial regarding merits on or before **February 19, 2015**.

On or before **March 12, 2015**, any party may supplement its designation in response to any other party's designation, so long as that party has not previously retained an expert to testify on that subject. Expert designations shall include the name, address, and telephone number of each expert, and a reasonable summary of the testimony the expert is expected

1 to provide. The list shall also include the normal rates the expert charges for deposition and
2 trial testimony.

3 The parties must identify any person who may be used at trial to present evidence
4 pursuant to Rules 702, 703 or 705 of the Federal Rules of Evidence. This requirement is not
5 limited to retained experts.

6 **Please be advised that failure to comply with this section or any other discovery
7 order of the Court may result in the sanctions provided for in Fed. R. Civ. P. 37,
8 including a prohibition on the introduction of experts or other designated matters in
9 evidence.**

10 3. All merits expert disclosures required by Fed. R. Civ. P. 26(a)(2) shall be
11 served on all parties on or before March 26, 2015. Any contradictory or rebuttal
12 information shall be disclosed on or before April 9, 2015. In addition, Fed. R. Civ. P.
13 26(e)(1) imposes a duty on the parties to supplement the expert disclosures made pursuant
14 to Fed. R. Civ. P. 26(a)(2)(B) by the time that pretrial disclosures are due under Fed. R. Civ.
15 P. 26(a)(3) (discussed below). This disclosure requirement applies to all persons retained
16 or specially employed to provide expert testimony, or whose duties as an employee of the
17 party regularly involve the giving of expert testimony.

18 **Please be advised that failure to comply with this section or any other discovery
19 order of the Court may result in the sanctions provided for in Fed. R. Civ. P. 37,
20 including a prohibition on the introduction of experts or other designated matters in
21 evidence.**

22 4. All discovery, including expert discovery, shall be completed by all parties on
23 or before May 7, 2015. “*Completed*” means that all discovery under Rules 30-36 of the
24 Federal Rules of Civil Procedure, and discovery subpoenas under Rule 45, must be initiated
25 a sufficient period of time in advance of the cut-off date, so *that it may be completed* by the
26 cut-off date, taking into account the times for services, notice, and response as set forth in
27 the Federal Rules of Civil Procedure. The Court expects counsel to make every effort to
28 resolve all disputes without court intervention. Counsel must promptly and in good faith

1 meet and confer with regard to all discovery disputes in compliance with Local Rule 26.1(a).
2 Discovery motions must be filed in the time and manner directed by Magistrate Judge
3 Burkhardt (*see* Judge Burkhardt's Civil Chambers Rules on Discovery Disputes available
4 on the Court's website). All discovery motions must be filed within 30 days of the service
5 of an objection, answer, or response which becomes the subject of dispute, or the passage
6 of a discovery due date without response or production, and only after counsel have met and
7 conferred to resolve the dispute **and** participated in an informal teleconference with the
8 Court. **A failure to comply in this regard will result in a waiver of a parties discovery**
9 **issue. Absent an order of the court, no stipulation continuing or altering this**
10 **requirement will be recognized by the court.**

11 5. Plaintiffs shall file their motion for class certification on or before **January 19,**
12 **2015.** All other pretrial motions, other than motions to amend or join parties, or motions *in*
13 *limine*, shall be filed on or before **June 8, 2015.** Motions will not be heard or calendared
14 unless counsel for the moving party has obtained a motion hearing date from the law clerk
15 of the judge who will hear the motion. **Be advised that the period of time between the**
16 **date you request a motion date and the hearing date may be up to sixty (60) days.**
17 **Please plan accordingly.** Failure of counsel to timely request a motion date may result in
18 the motion not being heard.

19 Any *Daubert* motions shall be filed along with motions for summary judgment unless
20 no motions for summary judgment will be filed, in which case the parties may file *Daubert*
21 motions along with motions *in limine*.

22 Briefs or memoranda in support of or in opposition to any pending motion shall not
23 exceed twenty-five (25) pages in length without leave of the judge who will hear the motion.
24 No reply memorandum shall exceed ten (10) pages without such leave of court.

25 6. Pursuant to Local Rule 7.1.f.3.c, **if an opposing party fails to file opposition**
26 **papers in the time and manner required by Local Rule 7.1.e.2, that failure may**
27 **constitute a consent to the granting of a motion or other request for ruling by the**
28 **Court.** Accordingly, all parties are ordered to abide by the terms of Local Rule 7.1.e.2 or

1 otherwise face the prospect of any pretrial motion being granted as an unopposed motion
 2 pursuant to Local Rule 7.1.f.3.c.

3 7. A Mandatory Settlement Conference shall be conducted on May 12, 2015, at
 4 1:30 p.m. in the chambers of Magistrate Judge Jill L. Burkhardt.¹ Counsel shall lodge
 5 **confidential** settlement statements by e-mail to efile_Burkhardt@casd.uscourts.gov and in
 6 accordance with Magistrate Judge Burkhardt's Civil Chambers Rules, no later than May 4,
 7 2015. Each party's settlement statement shall concisely set forth the following: (1) the
 8 party's statement of the case; (2) the controlling legal issues; (3) issues of liability and
 9 damages; (4) the party's settlement position, including the last offer or demand made by that
 10 party; (5) a separate statement of the offer or demand the party is prepared to make at the
 11 settlement conference; and (6) a list of all attorney and non-attorney attendees for the
 12 Conference, including person(s) and their title(s) or position(s) with the party who will
 13 attend and have settlement authority at the conference. **Settlement conference statements**
 14 **shall not be filed with the Clerk of the Court. Settlement conference statements may**
 15 **be exchanged confidentially with opposing counsel within the parties' discretion.**

16 Pursuant to Civil Local Rule 16.3, all party representatives and claims adjusters for
 17 insured defendants with full and unlimited authority² to negotiate and enter into a binding
 18 settlement, as well as the principal attorney(s) responsible for the litigation, must be present
 19 and legally and factually prepared to discuss and resolve the case at the mandatory
 20 settlement conference. In the case of a corporate entity, an authorized representative of the
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22 ¹ The Court welcomes the parties to request additional settlement conferences at any stage
 23 in the litigation. The parties may request a settlement conference by jointly calling chambers or by filing
 24 a Joint Motion.

25 ² “Full authority to settle” means that the individuals at the settlement conference must be
 26 authorized to fully explore settlement options and to agree at that time to any settlement terms acceptable
 27 to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d 648 (7th Cir. 1989). The
 28 person needs to have “unfettered discretion and authority” to change the settlement position of a party.
Pitman v. Brinker Int'l., Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring a
 person with unlimited settlement authority to attend the conference includes that the person’s view of the
 case may be altered during the face to face conference. *Id.* at 486. A limited or a sum certain of
 authority is not adequate. *Nick v. Morgan’s Foods, Inc.*, 270 F.3d 590 (8th Cir. 2001).

1 corporation who is not retained outside counsel must be present and must have discretionary
2 authority to commit the company to pay an amount up to the amount of the Plaintiff's prayer
3 (excluding punitive damages prayers). The purpose of this requirement is to have
4 representatives present who can settle the case during the course of the conference without
5 consulting a superior.

6 Failure to attend the conference or obtain proper excuse will be considered grounds
7 for sanctions.

8 8. The parties must comply with the pretrial disclosure requirements of Fed. R.
9 Civ. P. 26(a)(3) no later than **August 31, 2015**. Please be advised that failure to comply
10 with this section or any other discovery order of the Court may result in the sanctions
11 provided for in Fed. R. Civ. P. 37, including a prohibition on the introduction of
12 experts or other designated matters in evidence.

13 9. In jury trial cases before the Honorable Cynthia Bashant, neither party is
14 required to file Memoranda of Contentions of Fact and Law pursuant to Civil Local Rule
15 16.1.f.2.

16 10. Counsel shall confer and take the action required by Local Rule 16.1.f.4.a on
17 or before **August 24, 2015**.

18 11. Counsel for the Plaintiff(s) must provide opposing counsel with the proposed
19 pretrial order for review and approval and take any other action required by Local Rule
20 16.1.f.6.a on or before **August 31, 2015**.

21 12. Written objections, if any, to any party's Fed. R. Civ. P. 26(a)(3) pretrial
22 disclosures shall be filed and served on or before **August 31, 2015**. Please be advised that
23 the failure to file written objections to a party's pretrial disclosures may result in the
24 waiver of such objections, with the exception of those made pursuant to Rules 402
25 (relevance) and 403 (prejudice, confusion or waste of time) of the Federal Rules of
26 Evidence.

27 13. The proposed pretrial order shall be lodged with the district judge's chambers
28 on or before **September 4, 2015** and shall be in the form prescribed in Local Rule 16.1.f.6.c.

1 14. The final pretrial conference is scheduled on the calendar of the Honorable
2 Cynthia Bashant for Monday, September 21, 2015 at 11:00 a.m.

3 15. All motions *in limine* are due no later than October 5, 2015.

4 16. All responses to the motions *in limine* are due no later than October 19, 2015.

5 17. The parties shall submit the following no later than October 19, 2015: (1) joint
6 proposed jury instructions; (2) proposed verdict form; (3) *voir dire* questions; and (4)
7 statement of the case.

8 18. The parties shall exchange final exhibit and witness lists no later than
9 November 10, 2015.

10 19. A hearing for the motions *in limine* is scheduled for Monday, November 9,
11 2015 at 10:30 a.m.

12 20. The trial in this matter shall commence on Tuesday, November 17, 2015 at
13 9:00 a.m.

14 21. The dates and times set forth herein will not be modified except for good cause
15 shown.

16 22. Plaintiffs' counsel shall serve a copy of this order on all parties that enter this
17 case hereafter.

18 **IT IS SO ORDERED.**

19
20 DATED: November 24, 2014

21 
22 JILL L. BURKHARDT
23 United States Magistrate Judge
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